Supreme Court, U.S.
FILED

(1)

No. 02 226 JUN - 3 2002

OFFICE OF THE CLERK

IN THE

Supreme Court Of The United States

October Term, 2002

AMRIT LAL, (Petitioner)

vs.

BOROUGH OF KENNETT SQUARE - (Respondent)

Petition for A WRIT OF CERTIORARI to the SUPREME COURT OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI

AMRIT LAL, Ph.D.
338 Joy Lane
West Chester, PA 19380
(610) 692-6344

Petitioner, Pro se

August 8th, 2002

2+1pp

QUESTIONS PRESENTED

I. IS THE TIMELY NOTICE OF REMOVAL TO A FEDERAL DISTRICT COURT FROM A STATE COURT UNDER 28 U.S.C. 1441, THE EQUIVALENT OF A NOTICE OF APPEAL HAVING THE EFFECT OF FREEZING OR SUSPENDING THE STATUS OF THE CASE IN THE STATE COURT UNTIL REMAND AND TRANSFER BACK TO THE STATE COURT.

II. WAS PETITIONER DEPRIVED OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS WHEN UPON REMND HIS APPEAL FILED WITHIN THIRTY (30) DAYS TO THE APPROPRIATE COURT WAS QUASHED AS BEING OUT OF TIME BECAUSE OF AMBIGUITY AND VAGUENESS IN STATE LAW CONCERNING TREATMENT OF REMOVED CASES AND BECAUSE OF THE SETTLED BIAS AGAINST THIS PETITIONER IN THE STATE COURT.

III. DID THE TRIAL COURT DEPRIVE PETITIONER OF DUE PROCESS AND EQUAL PROTECTION IN DISMISSING HIS PETITION FOR THE APPOINTMENT OF VIEWERS TO DETERMINE JUST COMPENSATION FOR THE INVERSE CONDEMNATION AND TAKING OF HIS PROPERTY FOR A PERIOD OF FOUR YEARS.

IV. DID THE FEDERAL DISTRICT COURT ERR IN TREATING THIS PETITIONER AS A "PLAINTIFF" RATHER THAN A "DEFENDANT" IN THIS REMOVAL CASE OF JUST COMPENSATION FOR FIFTH AMENDMENT TAKING AND GRANTING A MOTION FOR REMAND BY IGNORIN THE REALITY OF THIS PLAINTIFF BEING ACTUALLY A "DEFENDANT" AS A MATTER OF LAW AND AS A MATTER OF FACT UNDER THE PECULIAR CIRCUMSTANCE OF INVERSE CONDEMNATION BY A MUNICIPALITY ENDOWED WITH THE POWERS OF EMINENT DOMAIN.

PARTIES TO THE PROCEEDING

The caption contains the name of the two parties – the petitioner is Amrit Lal and the respondent is the Borough of Kennett Square.

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E. Memorandum Order of U.S. District Court for the Eastern District of Pennsylvania granting respondent Borough's Motion to Remand.

F. Order of the United States Court of Appeals for the Third Circuit denying petition for rehearing.

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H. Amendment XIV to the United States Constitution

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TABLE OF AUTHORITIES

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Kurz v. Lockhart 8
656 A.2d 160 (Pa.Comwlth. 1995)
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276 F. Supp. 51 (S.D. N.Y. 1967)
Sersted v. Midland-Ross Corp 10
471 f. Supp. 298 (E.D. Wis. 1979)
Shaner v.Perry Township 11
775 A.2d 887 (Pa.Cmwlth. 2001)
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683 F. 2d 744 (3d Cir. 1982)

STATUTES:

UNITED STATES CONSTITUTION,
Amendments V and XIV
28 U.S.C. # 1441
42 Pa. C.S. # 5103
26 Pa.C. S. I-502

RULES:

S.Ct. Rule 10 (c)

No.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2002

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Amrit Lal, respectfully requests that a writ of certiorari issue to review the quashing or dismissal of his appeal by the Commonwealth Court of Pennsylvania with respect to which a Petition for Allowance of Appeal was denied by the Supreme Court of Pennsylvania on March 4, 2002.

OPINIONS BELOW

The Commonwealth Court of Pennsylvania quashed the appeal without considering the fact that the matter had been removed to the federal court and that the appeal period within the state court had been frozen until disposition by the federal forum. The U. S. District Court for the Eastern District of Pennsylvania had granted respondent's Motion to Remand the case to the state court on the ground that removal was being sought by the petitioner as a "plaintiff" and not a "defendant" in the state court, without considering the fact that a plaintiff-petitioner seeking just compensation for Fifth Amendment Taking must be considered a "defendant" in that he would be in the role of a defendant in the normal condemnation case. On appeal, the Third Circuit Court expressed the routine view that it had no jurisdiction once remand had been granted by a district court.

The lower court opinion in the court of Common Pleas of Chester County, Pennsylvania, had dismissed petitioner's petition for appointment of a Board of Viewers to determine damages for injury to his person and property caused by the municipality which deprived petitioner of the use of his property for a period

of four (4) years. The trial court erred by failing to treat the issue of just compensation as a question of law and confusing it with the issues raised in the equity proceedings being considered by that court. In other words the question of just compensation should not have been intermingled with a constitutional question for which the Pennsylvania legislature had enacted a separate and distinct statute, 26 Pa.C.S.1-502 et.seq. That question should have been, but was never, decided separately and independently on its merits.

JURISDICTION

This Court's jurisdiction is invoked under Title 28 U.S.C. Section 1257 (a). The Supreme Court of Pennsylvania on March 4, 2002, denied a Petition for Allowance of Appeal of the Order of the Commonwealth Court dated August 23, 2001 and the Order dated September 26, 2001, docketed September 27, 2001.

CONSTITUTIONAL PROVISIONS

AMENDMENT XIV – denial of due process and equal protection.

AMENDMENT V – Just Compensation for Inverse Condemnation

STATEMENT OF THE CASE

Petitioner was the owner of a multi-unit affordable housing facility containing 36 units in the Borough (municipality) of Kennett Square, County of Chester, Commonwealth of Pennsylvania. In December, 1993, the municipality took control and possession of the property, kept all the rents collected, did not make mortgage

payments to the creditor bank which had provided loans for the acquisition of said real estate. The municipality did not make adequate repairs, became absolutely negligent in its management of the property, and all income received was wasted, out of spite, hatred and bias against the petitioner because of his diverse ethnicity and his rental of the property to minority groups and migrant workers. The covenants contained in the property deeds of the neighboring owners (almost 100 per cent predominantly White race) prohibited rental, occupancy or use by the minorities. This petitioner naively believed such a situation could not be acceptable to the courts of law, otherwise, he would not have taken pains and mortgage loans to acquire the residential apartments. The control and possession of the property was obtained through the instrumentality of an injunction in an equity action on the pretext of deficiencies in the apartments rather than a Declaration of Taking. However, it amounted to a Fifth Amendment taking which is why the case comes under the rubric of Inverse Condemnation. Several efforts by the petitioner to bring an end to the possession and control by the respondent Borough were met with opposition with the eventuality of colossal waste of petitioner's private property and expectation of a reasonable return from his investment. This loss of income and deprivation continued for a period of four (4) years. The only way to get rid of the control and possession by the Borough was to sell to a party who was not a minority group member. This was accomplished in December 1997.

In 1993, petitioner had received an offer to sell the property at the market value of $1,350,000.00 but the Borough created obstructions to the sale at that time

because its equity action was pending. In December 1997, the property could not be sold for more than $830,000.00 and all the proceeds were retained by the creditor bank which had not been paid any installments during the control and possession by the Borough. The creditor bank had in its possession a deficiency judgment obtained through foreclosure proceedings in the amount of over $425,000.00 to be paid from the personal pocket of the petitioner (rather than the expected income from the real estate). This colossal and Himalayan loss could have been prevented through proper and non-negligent management by the Borough and equitable allocation of the collected rents.

PROCEDURAL HISTORY:

Within two years of the sale of the property, in November 1999, petitioner initiated a civil action for the recovery of damages and just compensation arising from the control and possession of his property by the respondent Borough as provided in the Pennsylvania Statute dealing with eminent domain matters. The petition for just compensation through the appointment of a Board of Viewers was dismissed by the trial court on June 27, 2000. (Petitioner had attempted to disqualify the assigned judge because of his known and established bias against the petitioner but he did not succeed in his efforts). Because it was apparent that appropriate relief could not be obtained in the state court, this petitioner filed a Notice of Removal to the Federal District Court for the Eastern District of Pennsylvania. Upon motion of the respondent Borough, the District Court remanded the matter to the state courts on the ground that the removal of the case was by a "plaintiff" and

not by a "defendant". Because of the linguistic complexity and peculiarity of semantics, a timely appeal was filed with the Third Circuit Court of Appeals which refused to align the misaligned semantics of the words, plaintiff and "defendant".

Within 30 days of the denial of relief by the Third Circuit, petitioner turned to the transfer of the matter to the state court and filed a Notice of Appeal to the appropriate appellate court, namely, the Commonwealth Court of Pennsylvania. The Commonwealth Court quashed the appeal by an Order dated August 23, 2001 on the ground that removal to the federal court was improper and that the appeal should have been filed within 30 days of the trial court's Order of June 27, 2000. Petitioner sought reconsideration on the ground that Removal to the Federal court was proper under the Removal Statute and the jurisdiction of the state courts was suspended – the cause remaining in status quo. The Commonwealth Court denied reconsideration on September 26, 2001. As allowed by Pennsylvania Rules of Appellate Procedure, a timely petition for allowance of appeal was filed with the Supreme Court of Pennsylvania which denied same on March 4, 2002. Upon application, extension of time was granted for 60 days on June 11, 2002 to file this petition for a Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

1. General

There appears to be confusion or contradiction in the Commonwealth of Pennsylvania as to the effect of a Notice of Removal of a pending case to the federal court

with respect to the jurisdiction of the state appellate courts. A notice, application or petition under the Removal Statute pursuant to 28 U.S.C. Section 1441 suspends or freezes the status of the case in the state court, and upon remand, the case is revived and reinstated at the point and stage where it was removed from. Thus, if the point of removal was the time for filing a Notice of Appeal to a state appellate court, the same action by the petitioner occurred upon remand. The passage of time between Removal to he Federal Court and the eventual remand and transfer should not be the excuse for quashing an appeal as was done in this case. At this time, the state procedural rules are silent on the question of timeline or a specific time period within which the matter may be transferred to the state court. Here then is an important question of procedural and substantive law that has not been, but should be, settled by the Honorable Justices of the United States Supreme Court. This question alone constitutes sufficient reason for granting a writ of certiorari under S. Ct. Rule 10 (c).

COMPLEXITY AND LACK OF CLARITY IN PENNSYLVANIA LAW

The difficulty in Pennsylvania arises because the state procedural rule is ambiguous and the intermediate appellate courts are inconsistent in their approach to resolving the matter when the case is remanded from the Federal Court(s) upon lack of or acceptance of jurisdiction.

The Pennsylvania statute governing removal of federal cases is joined or combined with Rule 5103, 42

Pa.C.S.A., titled "Transfer of Erroneously Filed Matters", part (a) of which is the general rule and part (b) deals with FEDERAL CASES, which reads:

"(b) Federal Cases

(1) Subsection (a) shall also apply to any matter transferrd or REMANDED BY ANY UNITED STATES COURT for a district embracing any part of this Commonwealth. In order to preserve a claim under Chapter 55 (relating to limitation of time), a litigant who timely commences an action or proceeding in any United States court .... is not required to commence a protective action in a court ... of this Commonwealth. WHERE A MATTER IS FILED IN ANY UNITED STATES COURT ....AND THE MATTER IS DISMISSED BY THE UNITED STATES COURT FOR LACK OF JURISDICTION, ANY LITIGANT in the matter filed may transfer the matter to a court ... of this Commonwealth by complying wih the transfer provisions set forth in paragraph (2)."

(Emphasis supplied).

Part (a) of Section 5103 stated that when transferred "to the proper court ...of this Commonwealth where it shall be treated as if originally filed in the transferee court ... ON THE DATE WHEN FIRST FILED IN THE OTHER TRIBUNAL". (Emphasis supplied). This shows a legislative intent to toll the limitation or suspend the limitation periods.

Part (c) of Rule 5103 states that the transferee state court shall NOT QUASH SUCH APPEAL OR DISMISS THE MATTER.

In the matter of this petitioner, upon transfer, the appeal was quashed by the Commonwealth Court which is not permitted by the Pennsylvania Statute 5103

(c). Furthermore, the Third Circuit Court of Appeals has held that under Rule 5103(b), the transferee court shall not bar a trial of the state claim upon remand to the courts of the Commonwealth of Pennsylvania. See WEAVER v. MARINE BANK, 683 F.2d 744 (3d Cir. 1982).

VAGUENESS AND AMBIGUITY OF STANDARD APPLIED BY PENNSYLVANIA APPELLATE COURTS

The standard applied by the Intermediate Appellate Courts in Pennsylvania is that of PROMPTNESS. However, promptness is not defined precisely in terms of a period of time, such as 90 days, two months (60 days), or thirty (30) days.

In KURZ v. LOCKHART, 656 A. 2d 160 (Pa.Commwlth 1995), the appellant delayed for ONE YEAR the transfer of his cause to state court after the federal court dismissed portion of their federal action against defendants through summary judgment ruling. The Commonwealth Court concluded:

"We hold that the Kurzes were required to transfer this matter to state court promptly after the district court dismissed the action against Monteleone and Lockhart on December 22, 1988. This the Kurzes certain did not do." 656 A.2d at 164.

In COLLINS v. GREEN COUNTY MEMORIAL HOSPITAL, 615 A.2d 760 (Pa. Superior 1992), there was a SEVEN MONTH delay in transferring state claims from a federal district court to a court of common pleas following a judgment by the federal court on a federal

claim and dismissal of the remaining state claims for lack of jurisdiction. The Superior Court found that the seven month delay violated the PROMPTNESS requirement implicit in section 5103. 615 A.2d at 763.

It is of great interest to note that the Superior Court of Pennsylvania in COLLINS called for the legislature to include a specific requirement of thirty (30) days time requirement in the provision of 42 Pa.C.S.A. # 5103. 615 A.2d at 763. This proposal was cited by the Superior Court again in FERRARI v. ANTONACCI, 689 A.2d 320 at 323 (Pa.Superior, 1997). In FERRARI, appellants were confused as to the proper time period for transferring the matter to the state court.

Your petitioner respectfully submits that he transferred his matter to the Commonwealth Court WITHIN THIRTY (30) DAYS of the final dismissal by the federal courts in Philadelphia. Petitioner had hoped that the Supreme Court of Pennsylvania would either make more specific the standard of promptness, or, in this particular matter would reverse the ruling of the Commonwealth Court which quashed petitioner's appeal as untimely even though Rule 5103 (c) prohibited such a procedure to quash or dismiss. This court can clearly see that petitioner's action within 30 days was not considered "prompt".

Thus in Pennsylvania, the issue still remains, whether PROMPTNESS standard is met in 30 days, 60 days, 90 days, or what, and whether courts in Pennsylvania should give due deference to the requirement of Federal Removal statute.

ERROR OF THE FEDERAL DISTRICT COURT.

The federal district court, upon timely removal from state court got caught up in the semantic complexity whether the petitioner removing the case to the federal court was a "plaintif" or a "defendant" in the state court. The district court relied upon CONNOR v. SALZINGER, 457 F.2d 1241 (3d Cir. 1972) in remanding the matter to the state court. The federal district court overlooked the EXCEPTION to that rule made by the Congress that where a FAIR HEARING is IMPOSSIBLE in a state forum, the federal district court will not grant a motion for remand.

Furthermore, in a matter involving FIFTH AMENDMENT TAKING, where the plaintiff was a municipality, this petitioner was a defendant. Therefore when the petitioner is seeking constitutionally permitted JUST COMPENSATION, he could not be swept aside under the rubric of "plaintiff". This petitioner respectfully submits that a party seeking just compensation for taking of his property (directly or indirectly by a municipality endowed with the power of eminent domain) is always a DEFENDANT, OR A DEFENDANT IN PERPETUITY.

A misaligned party such as the petitioner seeking just compensation could have been realigned (as a defendant) for purposes of removal jurisdiction in this case. See **Sersted v.Midland-Ross Corp.,** 471 F. Supp. 298 (E.D. Wis. 1979); **New York Shipping Assn. v. International Longshoreman's Assn.,**AFL-CIO, 276 F. Supp. 51 (S.D.N.Y.1967). The right of a landowner to

seek proper damages for a de facto taking of his property has long been recognized in Pennsylvania. See, e.g., Shaner v.Perry Township, 775 A.2d 887 (Pa.Cmwlth. 2001) wherein the usual plaintiff/defendant roles had to be reversed because of the municipality's filure to follow the proper procedure upon condemnation. Clearly, then, an inverse condemnation action can be removed to a federal court. See United States v. 35.87 Acres of Land, more or less, 1999 WL 391395 (E.D.Pa. 1999).

THE UNDERLYING CAUSE IS MERITORIOUS

Manifest injustice has occurred in this case because the trial judge erroneously misapprehended the fact that question involving a legal and statutory remedy such as just compensation cannot and should not be intermingled with equitable remedies being pursued by a municipality. The Pennsylvania Supreme Court should have reversed the Commonwealth Court because of this well settled doctrine that remedies in law do not mix with remedies in equity.

The underlying cause in this petition is the inverse condemnation of this petitioner's property by the respondent Borough for a period of four years. The temporary taking became a permanent taking because the Borough proceeded frorn the unacceptable policy that persons of ethnic diversity should not own residential rental real estate in the Borough of Kennett Square. The Borough employed devious and non-customary means of obtaining control and possession of this petitioner's property. Having acquired the control through an equity injunction, the respondent became negligent and

careless in its fiduciary duties. It arranged not to pay mortgage installments to this petitioner's creditor bank from the moneys collected as rents. It destroyed any expectation of a minimal return from petitioner's investments. The Borough just went too far. **First English Evangelical Lutheran Church v. County of Los Angeles,** 482 U.S. 304, 107 S.Ct. 2378 (1987).

CONCLUSION

As is appaent from the foregoing, there are several unresolved procedural issues which should be clarified by the Justices of the U. S. Supreme Court. The ambiguity and lack of clarity in Pennsylvania law related to Removal and transfer back to state court deprived this petitioner to procedural and substantive due process. The semanics in plaintiff-defendant terminology deprived the petitioner from an objective consideration by the federal district court of his claim to just compensation in the matter of a Fifth Amendment Taking.

Therefore, petitioner prays that a writ of certiorari issue to the Supreme Court of Pennsylvania. In the alternative, your Honorable Court may summarily reverse the state court and order the appointment of a Board of Viewers to determine just compensation for this petitioner in this cause.

RESPECTFULLY SUBMITTED,

AMRIT LAL
Petitioner, pro se

APPENDIX A

Supreme Court of Pennsylvania

MIDDLE DISTRICT

NO. 883 MAL 2002

AMRIT LAL,
Petitioner
v.
BOROUGH OF KENNETT SQUARE
Respondent

ORDER

PER CURIAM

AND NOW, this 4th day of March, 2002, the Petition for Allowance of Appeal is hereby DENIED.

TRUE AND CORRECT COPY
Attest MAR 5, 2002

Shirley Bailey, Chief Clerk

APPENDIX B

Commonwealth Court of Pennsylvania

No. 1722 C.D. 2001

NOW, September 26, 2001, upon consideration of appellant's petition for consideration en banc of per curiam order of August 23, 2001, the petition is denied.
Certified from the Record

Sep 27 2001
and Order Exit

APPENDIX C

Commonwealth Court of Pennsylvania

No. 1722 C.D. 2001

AMRIT LAL,
Petitioner
v.
BOROUGH OF KENNETT SQUARE
Respondent

ORDER

PER CURIAM

NOW, August 23, 2001, upon consideration of appellee's motion to quash and the reply thereto, and it appearing that appellant did not file a timely appeal of the June 27, 2000 order (but instead improperly tried to remove the case to federal court, see Judge Green's order of September 21, 2000 at No. 00-CV-3809), and it further appearing that appellant's notice of appeal of July 24, 2001, is an improper belated attempt to file an appeal of the June 27, 2000 order, the motion to quash is granted and the appeal in this matter is quashed. See Pa.R.A.P. 903(a).

Certified from the Record
Aug 24 2001 and Order Exit

APPENDIX D

In the Court of Common Plea

CHESTER COUNTY, PENNSYLVANIA

No. 1722 C.D. 2001

AMRIT LAL,
Petitioner
v.
BOROUGH OF KENNETT SQUARE
Respondent

Plaintiff, pro se
William J. Gallagher, Esquire and Timothy F. Rayne, Esquire
Attorneys for Defendan

ORDER

AND NOW, this 27th day of June, 2000, upon consideration of Plaintiff's Motion to strike Defendant's Notice to Plead, and Defendant's Response thereto, it is hereby ORDERED AND DECREED that Plaintiff's Motion is DENIED. It is further ORDERED that upon consideration of Defendant's Preliminary Objections to the Petition for the Appointment of a Board of Viewers, and the Petitioner's response thereto, it is hereby ORDERED and DECREED that the Objections are SUSTAINED and the Petition for Appointment of a Board of Viewers is DISMISSED with prejudice.[1]

BY THE COURT
THOMAS G. GAVIN

1. The issue of whether the Borough's actions constituted a de facto taking has already been addressed and rejected on multiple occasions by this Court and the Appellate Courts. Under the doctrine of res judicata, this issue cannot be litigated again. Balent v.City of Wilkes-Barre, 542 Pa. 555, 669 A.2d 309 (1995). Even if the merits of the Petition could be addressed by this Court, based upon the facts of the case, it is clear that the Borough was exercising its police powers, not its eminent domain powers, and, as such, no valid claim for an appointment of viewers exists. German v. City of Philadelphia, 683 A.2d 323 (Pa.Commw. 1996).

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION

NO. 00-CV-3809

AMRIT LAL, :
Petitioner :
v. :
BOROUGH OF :
KENNETT SQUARE :
Respondent

MEMORANDUM ORDER

Filed Sep 20, 2000

Presently before the court is the motion of Defendant, Borough of Kennett Square, for remand and Plaintiff Amrit Lal's response thereto.

Plaintiff initially commenced this action on March 9, 2000 in Pennsylvania seeking an appointment of a Board of Viewers to determine compensation for an alleged inverse condemnation of Plaintiff's property. Defendant filed preliminary objections in response. On June 27, 2000, Judge Gavin of the Court of Common Pleas of Chester County issued an order sustaining Defendant's preliminary objections and dismissing Plaintiff's petition with prejudice.

On or about July 27, Plainiff filed a Petition for Removal of pending matter from state court to this court. On July 28, 2000, Plaintiff filed a Notice of Removal to Federal Court in the Court of Common Pleas of Chester County. Defendant's instant motion for remand to state court asserts that pursuant to 28 U.S.C. # 1441, only a defendant may petition to remove a case to federal court. Plaintiff subsequently filed an answer requesting denial of the remand.

Despite Plaintiff's argument to the contrary, only a defendant is permitted to remove a case to Federal Court. 28 U.S.C. # 1441, Connor v. Salzinger, 457 F.2d 1241 (3rd Cir. 1972). Therefore, Defendant's motion to remand will be granted. AND NOW, this 20th day of September, 2000, IT IS HEREBY ORDERED that Defendant's motion for REMAND is GRANTED. IT IS FURHER ORDERED THAT the Clerk of the Court is directed to remand this case back to the Court of Common Pleas of Chester County from which it was removed.

BY THE COURT
CLIFFORD SCOTT GREEN, S.J.

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A.NO. 00-3486

AMRIT LAL,
Petitioner
v.
BOROUGH OF KENNETT SQUARE
(E.D. Pa. Civ. No. 00-cv-03809)

Present: BECKER, Chief Judge, WEIS AND GARTH, Circuit Judges

Submitted are:
(1) By the Clerk for possible dismissal due to a jurisdictional defect
(2) Appellee's jurisdictional response,
(3) Appellant's Request for Consideration of the Appeal as Interlocutory, or From Collateral Order, Or, A Petition For a Writ of Mandamus Under All Writs Act construed as a response to the jurisdictional issue,
in the above –captioned case.

Respectfully,
Clerk

ORDER

The foregoing appeal is dismissed for lack of appellate jurisdiction because the appeal is taken from an order that is not appealable. On July 27, 2000, Mr. Lal filed a

Notice for Removal from the Court of Common Pleas in Chester County to the United States District Court for the Eastern District of Pennsylvania. On August 2, 2000, the Borough of Kennett Square filed a Motion for Remand, asserting that pursuant to 28 U.S.C. # 1441, only a defendant may petition to remove a case to Federal Court. By order entered September 21, 2000, the District Court granted the motion to remand. Appellant appeals from that order.

Generally, an order remanding a case to the state court from which it was removed is not reviewable, on appeal or otherwise, except where the case was removed pursuant to 28 U.S.C. # 1443. See 28 U.S.C. # 1447 (d); Davis v. Glanton, 107 F.3d 1044, 1047 (3d Cir. 1997). More specifically, except in a case removed under #1443, #1447 (d) prohibits review of a remand order based on a district court's finding that it lacks jurisdiction, even if that finding is erroneous.[1] See Feidt v.Owens Corning Fiberglas Corp.,153 F.3d 124, 126-128 (3d Cir. 1998); Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 749-50 (3d Cir.1995). The exception set forth in section 1443 is available only when a defendant removes a case involving a civil rights issue concerning matters of racial equality. State of Georgia v. Rachel, 384 U.S. 780, 792 (1996). On this record, the exception to section 1447 (d) does not apply. Accordingly, the order appealed is not reviewable.

BY THE COURT
Signed. Circuit Judge
Dated: APR 30, 2001

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1. In his document construed as a jurisdictional response, Appellant avers that the District Court erred in remanding the matter.

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 00-3486

AMRIT LAL, Appellant

v.

BOROUGH OF KENNETT SQUARE

Present: BECKER, Chief Judge, SLOVITER, MANSMANN, SCIRICA, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES,WEIS*, and GARTH,** Circuit Judges

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SUR PETITION FOR PANEL REHEARING WITH SUGGESTION FOR REHEARING EN BANC

This petition for rehearing filed by Petitioner having been submitted to the judges who participated in the decision of his Court, and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is DENIED.

BY THE COURT

Signed. Chief Judge

Dated: June 25, 2001.

*As to panel rehearing only.

** As to panel rehearing only.

APPENDIX H.

AMENDMENT XIV to the United States Constitution Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX I.

AMENDMENT V to the United States Constitution (excerpt)

No person shall ....be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation